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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 442nd MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 15 November 2000, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.442/Add.1.

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GE.00-45957 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Third periodic report of Belarus (CAT/C/34/Add.12)

1. At the invitation of the Chairman, the delegation of Belarus took places at the Committee table.

2. The CHAIRMAN invited the Belarusian delegation to introduce the third periodic report of Belarus.

3. Mr. IVANOVSKY (Belarus) said that, as a member of the world community and in accordance with the principles and norms of the Charter of the United Nations, Belarus consistently adhered to human values. The amended Constitution adopted by referendum in 1996 proclaimed human rights and freedoms, and guarantees of their implementation, as the highest value and objective of society and the State.

4. Both the Constitution and the law of Belarus recognized the priority of international law, and the international treaties Belarus had ratified formed part of its domestic legislation. The new Criminal Code and the Code of Criminal Procedure were based on international standards and, in accordance with international law, the new Code for the Execution of Criminal Penalties provided safeguards against torture and other cruel, inhuman or degrading treatment or punishment.

5. In July 2000, Belarus had withdrawn its reservation under article 20 of the Convention. It was now considering withdrawing its reservations to the Geneva Conventions.

6. He said that, since the third periodic report had been submitted, the Refugees Act of 22 February 1995 had been amended to improve the treatment of persons applying for refugee status. Foreigners who were unlawfully forced to cross the border into Belarus and who expressed the intention to apply for refugee status would not be penalized under the legislation on unlawful entry to and residence in Belarus, and would not be returned to a country where their life or freedom were threatened. Foreigners who were recognized as refugees had the right to residence, job training, social protection and education, inter alia; they were also entitled to avail themselves of such rights on an equal footing with Belarusian citizens. Actions by State authorities or officials in that regard were subject to appeal.

7. Between 1999 and 2000, the Criminal Code had been amended to establish criminal responsibility for new crimes, including crimes against humanity, illegal deportation, enslavement, disappearance, human trafficking, racially-motivated acts of cruelty, forcible coercion, seizure of property and threatening a person's legitimate interests.

8. The judicial system was currently being reformed with a view to strengthening the role and independence of the judiciary.

9. In accordance with the provisions of article 13 of the Convention, special measures were being introduced into the Criminal Code in order to protect those involved in criminal proceedings and their families, where there was reason to believe that they might be subjected to intimidation.

10. The guarantor of adherence to the law and prevention of acts of torture was the Procurator-General, who was responsible for monitoring the implementation of legislation. One of the Procurator-General's most important functions was to enhance protection in the area of human rights and freedoms. The conceptual framework for that function was set forth in article 2 of the Criminal Code, which stipulated that the Procurator-General should aim to strengthen the rule of law in order to protect the rights and freedoms that were guaranteed to citizens regardless of social status, citizenship, race, gender, ethnicity, nationality, age or political or other convictions. In the first nine months of 2000, the Procurator-General's office had received and dealt with numerous complaints concerning violations of, inter alia, political, constitutional and social rights, as well as complaints concerning either methods used in prosecution proceedings and in the administration of detainees, or conditions in places of detention, all of which came within its jurisdiction.

11. The Procurator-General also monitored the execution of criminal penalties, and 13 people who had been unlawfully detained had been released. Disciplinary proceedings had been taken against 29 members of the staff of the institutions involved.

12. He said the principles of the Convention were reflected not only in the Constitution but also in legislation such as the Code of Criminal Procedure and the Criminal Code, which protected the individual from abuses, including illegitimate methods of prosecution and the use of violence. Belarus had prepared draft legislation establishing a human rights authority and was considering introducing a guarantee to the effect that, when all domestic remedies had been exhausted, an individual was entitled to recourse to international bodies.

13. In accordance with its obligations under article 11 of the Convention, Belarus paid close attention to conditions of detention and to the correction of detainees, in particular through labour. Among the prison population subject to mandatory labour, 58.9 per cent were employed. Moreover, in the first nine months of 2000, 6,131 prisoners had been released as compared with 4,424 in 1999. Belarus also periodically granted amnesties, and 5,810 prisoners from among the general prison population had been released under the Amnesty Act of 14 July 2000.

14. Belarus had stepped up its psychiatric services in the institutions, in order to identify those who were most prone to conflict and initiate preventive treatment. The situation in prisons had stabilized somewhat and there had been a sharp reduction in hooligan behaviour. Nevertheless, as an economy in transition, Belarus was finding it difficult to create appropriate conditions for detention. As of 1 October 2000, with 58,000 persons in detention, overcrowding was running at 35.3 per cent overall, with rates of 46.2 per cent in labour colonies and 18.8 per cent in pre-trial detention centres. Overcrowding was worst in the strict regime and rigorous regime colonies, with rates of 64.8 per cent and 62.1 per cent respectively. Of particular concern were the 1,396 cases of tuberculosis and 772 cases of HIV/AIDS infection found among prisoners in 2000.

15. Belarus hoped for special financial support from the international community and, for its part, would do all it could, within the limits of its jurisdiction, to ensure the elimination of torture and other cruel, inhuman or degrading treatment or punishment.

16. Ms. GAER (Country Rapporteur) said she welcomed Belarus's withdrawal of its reservation under article 20.

17. In its structure, the State Party's report only partly followed the Committee's guidelines: it gave information on the new legislation introduced since 1992 but lacked data on implementation. It rarely referred to the recommendations or comments made by the Committee on the previous report, and there were no annexes.

18. She noted that the legislation still contained no specific definition of the crime of torture. The offences defined in the Criminal Code were limited in scope and somewhat vague (para. 5 of the report). They also seemed to exclude acts prohibited under the Convention as long as they did not involve abuse of power. There was no reference to acts causing mental pain and suffering, or to disappearances, for example. The Committee's concern was that if the definition was not incorporated into domestic legislation, the law would remain too vague and would not provide sufficient support for the provisions of the Convention; that could ultimately result in impunity for acts constituting torture.

19. She said there was a lack of clarity in regard to article 2 of the Convention. Paragraph 3 of the report seemed to state that constitutional protection against torture was absolute, but went on to say that personal freedom could be limited or removed by the State in certain circumstances. She asked the delegation to clarify the position in that regard.

20. During its consideration of the previous report, the Committee had noted that detention could be extended to six months from the date of arrest, although the representative of Belarus at the time had said that it could be no more than three days. Moreover, members of the Human Rights Committee had recently been informed that, although police custody in Belarus should not exceed 48 hours, it could in practice be officially extended to as much as 18 months. That was a matter of great concern to the Committee, since it was during pre-trial detention that torture was most likely to take place. The current report made no mention of the regulations governing detention or of any right to access to a lawyer, a doctor or family members.

21. According to Amnesty International's report, protesters or demonstrators could be placed under administrative detention without formal charge.

22. In reference to article 3, paragraph 8 of the report, quoting the 1995 Refugees Act, stated that "refugees may not be returned against their will to a country which they left [...] as a result of a fully justified fear of persecution on the grounds of race, religion, citizenship or ethnicity". Was refoulement allowed if a person risked torture on other grounds, such as political opinions, gender discrimination, or conviction in the country concerned? It was not clear from the report who was responsible for considering refugee applications. Furthermore, no information was given on the procedure, or on whether expulsion decisions could be challenged. Clarification would be appreciated.

23. Previous conclusions and recommendations had requested the delegation to provide information on whether individual cases of torture existed in Belarus. During the consideration of the previous report, the delegation had mentioned the sentencing of five torturers, but it had not been made clear who those people were. Were they police officers, and if so from which force? Were they KGB, or officials of the previous regime? The statistics were not broken down in adequate detail. It was unclear why disciplinary measures had been taken against 300 officials found guilty of abusing their powers in 1992, whereas the figure for 1993 was only 26. It was nonetheless worrying that the 1998 figure had risen to 58. The Committee wished to know how many persons had been charged, how many acquitted, how many had served a sentence. Were they police officers or political officials?

24. The Committee received much information from other sources, including the International Helsinki Federation for Human Rights, which alleged that political opposition leaders such as Klimov and Kudinov had been held in detention for long periods of time on fabricated charges, ill-treated and in some cases tortured. Moreover, law enforcement bodies had failed to investigate such cases properly.

25. The national Belarus Helsinki Committee had received 32 complaints during 1999 from individuals alleging they had been victims of misconduct by law enforcement officials. Medical examinations had confirmed allegations of severe beatings with truncheons and kickings. Most cases involved abuse by the special militia force. It was estimated that the real number of cases was considerably higher, since most victims were afraid to report cases for fear of reprisals. Victims of torture included the opponents of President Lukashenko's regime, persons speaking publicly in the Belarusian language or using Belarusian national symbols and opposing the annexation of Belarus to Russia, as well as ordinary prison inmates. The Committee would appreciate clarification with regard to claims of imprisonment and maltreatment. What assurances were there regarding the well-being of detained persons?

26. The issue of violence against persons taking part in political demonstrations had been highlighted several times and had occurred specifically in July and October 1999 and March and November 2000. During demonstrations, some of which had attracted up to 20,000 participants, over 200 demonstrators had been detained by police using batons, riot shields and tear gas. Although the majority of those detained had been released shortly thereafter, physical ill-treatment had been reported after all four demonstrations.

27. Allegations by NGOs of ill-treatment and torture were very serious, and the purposes for which they had reportedly been used were very disturbing to the Committee. It was said that beatings, threats and torture, including electric shocks, had been used during investigations to obtain guilty pleas. Torture had been used as a punishment for incarcerated persons, including solitary confinement, rooms without windows, floors flooded with cold water, rooms with no beds, etc. Detainees had been deliberately placed in cells with prisoners infected with dangerous forms of tuberculosis and HIV. Juvenile offenders in special schools were subjected to beatings, isolation and food deprivation. Such allegations had not been addressed in the country report but were of concern regarding article 4 and other articles.

28. Among the prisoners and victims were some ordinary demonstrators as well as several politically highly visible individuals. Former Prime Minister Mikhail Chigir had been imprisoned and had alleged torture and ill-treatment during his detention. Andrei Klimov had been severely beaten whilst in detention, but police had refused to open an investigation. Victor Gonchar, who had begun a hunger strike, had been force-fed, handcuffed to heating pipes, and beaten. Oleg Volcheck, a lawyer who had defended people alleging ill-treatment, had been arrested following a demonstration and beaten; despite his demand that charges be brought against the police, the investigation had been dropped. At the peaceful demonstration and march by the youth wing of the Belarus Popular Front, demonstrators had been punched, kicked, truncheoned and detained. There was no indication as to whether allegations of police brutality would be investigated.

29. Disappearances, involving the prolonged incommunicado detention or death of a detainee, had been described by the Special Rapporteur on torture, the Working Group on Disappearances and the Declaration on Disappearances, as constituting torture for the victim and a kind of torture for family members due to continued uncertainty regarding the victim's fate. She wished particularly to bring up the cases of Yuri Zaharenko, Victor Gonchar, Anatoly Krasovsky and Dmitri Zavadsky, all of whom had "disappeared". There was a curious pattern to the official reaction to disappearances. Although the individuals concerned had not been seen for long periods, although their families believed they had "disappeared", although the circumstances of their disappearances were not clear, and despite requests, no credible investigation had been carried out in any of the cases. High-level officials, far from promising investigation or expressing distress and sympathy for the uncertain fate of their political colleagues, primarily responded by discrediting the opposition and making unfounded allegations as to their possible whereabouts or fate.

30. The failure by the relevant authorities to seriously address the issues and to proceed to an investigation was deeply disturbing. The Committee would appreciate clarification regarding the events and circumstances surrounding the reported disappearances, and what the State party intended to do to ensure credible investigation of those cases.

31. The fourth type of attack she wished to mention were street attacks, mainly attributed to Russian National Unity paramilitaries (RNE). The RNE was a Fascist group with Nazi-like emblems and uniforms, known for its attacks on Jews, Caucasians and Roma. In one RNE attack, former Deputy Foreign Minister Andrei Sannikov had been beaten unconscious; mace tear gas had been used on Dmitri Bondarenko, while Oleg Bebebin, who had tried to come to their aid, had been beaten severely in the kidneys. At the time of the attack the police responsible for that district could not be found, and later refused to make a report or to investigate the case.

32. The Committee and the Convention looked to the State party to meet its obligations in regard of the prohibition, investigation and punishment of torture. In the cases cited, they looked for assurance that credible investigations would be carried out, that the results would be made public, and that protection would be provided to the families of disappeared persons.

33. The cases cited raised the question of the independence of the judiciary and the rule of law, which was the sina qua non on which compliance with the Convention was based. The people who had been attacked or who had alleged attacks or maltreatment belonged to different political groups, or had held high-level posts previously, but they all had one thing in common; they opposed the President. The incidents raised serious questions which the Committee would like answered about the rule of law, the commitment to the Convention, the independence of the judiciary, and the future of Belarus.

34. Despite a statement at the time of the previous review that the constituent republics were drafting extradition legislation, there was as yet no extradition legislation in Belarus. Were the laws and norms mentioned in the oral report part of the extradition bill under consideration? The issue of extradition was central to the concerns of the Committee, and more information would be appreciated.

35. Mr. BURNS (Alternate Country Rapporteur) thanked the delegation for the useful detail provided on various legislative and judicial reforms. He noted however, that whereas many States had almost perfect formal legal rules, often for one reason or another they failed to observe them. The material provided to the Committee by bodies including Amnesty International seemed to indicate a disjunction in Belarus between the system and its actual implementation. That disjunction was reflected in the large number of cases appearing to require a response from police or judicial authorities and failing to obtain it. The conclusion that thus arose was that a state of impunity existed for the commission of certain types of criminal offence by State agents in Belarus. The particular cases drawn to the attention of the Committee also seemed to reflect that state of impunity, which was in turn related to the lack of independence of the judiciary, procurators and the legal profession in general.

36. The separation of the legislative, executive and judicial powers was not ensured, since the President appointed senior judges and junior judges were appointed by a committee of senior judges. At the lower end of the pyramid, lawyers owed their living to the Ministry of Justice, which had been known to remove a lawyer's licence to practise if he appeared on behalf of prominent members of the opposition. The delegation was requested to address those issues and was asked to provide convincing arguments that such was not the case.

37. In the absence of an independent judiciary, democracy could not function and basic human rights inevitably fell victim to those who would abuse them. A free and independent press was equally important to democracy. He asked the delegation to describe the status of freedom of communication in Belarus. Was there an official Government press? Did opposition press including television or radio exist? How were they regulated? Were they genuinely free?

38. He was confused about how compensation was granted to victims of crimes including torture and ill-treatment. Was it possible for a judge to authorize the grant of compensation only at the time of a criminal trial, or could an independent civil action be initiated by a victim? If prosecution and the authorization of a judge were the only means, the remedy was fairly slight; he asked the delegation to elaborate.

39. Since there was no definition of torture in the Criminal Code, how was it possible to inform the Committee how many acts of torture had been prosecuted?

40. There had been many allegations of cruelty, inhuman or degrading treatment and punishment, especially in prisons and detention centres. He asked the delegation to comment particularly on the allegations made by Valeri Shchukin on page 27 of the Amnesty International report dated 10 October 2000, and the claims on page 24. The same report complained that, detainees or prisoners especially members of the opposition, were regularly refused access to medical assistance (pages 35 and 36).

41. The Committee would like specific details on the conditions in which female detainees or prisoners were held. Were separate prisons provided for men and women, or separate facilities within one prison complex? Were women guarded by women prison officers or by male warders?

42. Noting that rank and file police officers would not take their obligations seriously unless they thought that their superiors did so as well, he asked how the Belarusian educational system ensured the professionalism of the police and of prison and detention staff.

43. He inquired whether Belarus intended to accede to the 1951 Convention relating to the Status of Refugees. How were asylum-seekers dealt with, particularly at the border with Russia? It was his understanding that the Belarusian immigration policy was based on the safe-third-country practice. Was immigration staff given specific instructions about the obligation not to return asylum-seekers in breach of article 3 of the Convention against Torture?

44. What had been done in Belarus pursuant to article 11 of the Convention to review interrogation rules and custodial arrangements? A number of NGOs had reported that many alleged cases of abuse involved a special militia force, the OMON. What was that force, what were its functions, and was it subject to any judicial control?

45. He was pleased to learn that Belarus had withdrawn its reservation on article 20; was it giving consideration to making the declaration under article 22?

46. He noted that the death penalty remained in force for serious crimes. How was capital punishment carried out? Did it take place in public or in private? Was a medical person always present?

47. The Belarusian delegation had referred to new legislation on hooligans. What exactly was a hooligan? There had been many reports that persons involved in peaceful demonstrations were characterized as hooligans and charged with hooliganism.

48. As for article 15, according to the report by Amnesty International, a judge who had sought political asylum in Germany had maintained that statements were habitually coerced and used as evidence in court. He asked the Belarusian delegation to comment on that assertion.

49. What was administrative arrest and administrative detention? Who could order it, and under what circumstances? How many prisons were there in Belarus? How were prison conditions monitored, and how often were standards reviewed, including those concerning medical attention?

50. Mr. RASMUSSEN said that, if he understood correctly, there were three kinds of pre-trial detention in Belarus: the militia stations, the IVS and SIZOs. What was the maximum length of detention in each of those facilities? He was particularly concerned about conditions in the IVS. Were mattresses and blankets provided? Did detainees have to wear the clothes they arrived in for the duration of their stay? Were the detention centres properly heated? Did they have natural light? What food was provided? Was outdoor exercise possible? Was provision made for family visits? Could detainees see a doctor?

51. A medical examination at the moment a person was imprisoned was very useful in ascertaining whether there had been any police brutality, excessive use of force or torture. Were detainees examined at such times? If so, were bruises and other marks on the body recorded? Was there a special register for recording such observations? Was such information systematically investigated? If so, what body was responsible for doing so? Such bruises might have arisen if the person had resisted arrest, but might also be the result of excessive use of force: whence the need for a systematic investigation.

52. He was pleased that there was a higher rate of release of prisoners; could the Belarusian delegation confirm that there had not also been a higher rate of imprisonment and that the prison population had really declined? The Committee had received reports of serious prison overcrowding, which made a prison stay inhuman and degrading. He sought information on the rate of overcrowding, in particular in SIZOs and corrective colonies. Was it true that prisoners were forced to sleep in shifts because of a shortage of beds?

53. Mr. CAMARA inquired about the status of the Procurator General and whether he was independent. How was the Procurator General appointed, and by whom? Was prosecution of an alleged offence mandatory or discretional?

54. Mr. SILVA HENRIQUES GASPAR said that, according to the information available to the Committee, the death sentence was handed down for many different offences and was carried out on a large scale. What was the policy of Belarus with regard to the death sentence? Did it plan to abolish capital punishment? Had any death sentences been commuted in the past? Were there any statistics on how many persons had been sentenced to death? How many persons were awaiting execution, and how many persons had in fact been executed?

55. Mr. YU Mengjia, referring to article 10 of the Convention, inquired about how training for law enforcement officials was conducted. What courses were held, and what were the results? Did the curriculum include classes on the Convention or other human rights instruments, as well as on the Standard Minimum Rules for the Treatment of Prisoners?

56. Mr. GONZALEZ POBLETE, referring first to paragraph 8 of the third periodic report, asked whether Belarusian law also guaranteed that refugees were not to be returned if they feared political persecution, which after all was the reason most commonly cited by refugees for fleeing their country.

57. Regarding article 14 of the Convention, he inquired who was responsible for ensuring payment of compensation to torture victims. Was the perpetrator or the State required to pay? Was the State liable if the perpetrator was a civil servant?

The public part of the meeting rose at 11.35 a.m.